

Significant Legislative Rule Analysis (SA)

Home care aide certification

March 29, 2013

Amending: WAC 246-10-501 Application of brief adjudicative proceedings
WAC 246-980-010 Definitions

WAC 246-980-020 Who must be certified as a home care aide?

WAC 246-980-030 Can a non-exempt long-term care worker begin working before obtaining certification as a home care aide?

WAC 246-980-040 What must a long-term care worker do to be eligible for a home care aide certification and what documentation is required?

WAC 246-980-050 How long does a long-term care worker have to complete home care aide training and certification requirements?

WAC 246-980-060 How does a home care aide renew a certification or reinstate an expired certification?

WAC 246-980-070 Who is exempt from obtaining a home care aide certification?

WAC 246-980-080 How does an exempt individual apply for certification as a home care aide?

WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?

WAC 246-980-100 Examination and reexamination for home care aide certification.

WAC 246-980-110 Continuing education.

WAC 246-980-120 Home care aide – application – conviction data – criteria for denial or conditional licensed; and

New WAC 246-980-130 Provision for delegation of certain tasks

New WAC 246-980-140 Scope of Practice for long-term care workers

Section 1. What is the scope of the rule?

Long-term care workers are employed in community-based care settings, such as adult family homes and assisted living facilities, and in in-home care settings through home care agencies and as individual providers under contract and paid by the Department of Social and Health Services (DSHS.) A home care aide certification is required for long-term care workers who began employment in these settings on or after January 7, 2012. The law exempts from initial training and home care aide certification those long-term care workers who were already employed before that date and who had completed the training required at the time they were hired. Current rules clarify that the exemption applies to those working as a long-term care worker employed any time between January 1, 2011 and January 6, 2012. Individuals who hold similar credentials, such as a Register Nurse (RN) or Licensed Practical Nurse (LPN) license or a nursing assistant-certified (NA-C) credential are also exempt from the certification requirement.

The proposed rules amend existing Department of Health (Department) requirements for home care aide certification and add new requirements in response to the Washington State Legislature passing Engrossed Substitute House Bill (ESHB) 2314 (chapter 164, Laws of 2012).

New language is added to the rules to:

- 1) Establish a scope of practice for long-term care workers, whether or not certified as a home care aide
- 2) Describe and clarify which long-term care workers are exempt from the requirement to obtain a home care aide certification,
- 3) Clarify that home care aides who perform nurse delegation tasks must follow the guidelines set out in rules adopted by the Nursing Care Quality Assurance Commission,
- 4) Allow long-term care workers to submit an application for a home care aide credential within fourteen days of their date of hire instead of three days of hire,
- 5) Make housekeeping changes, including revising definitions and correcting obsolete references to the Revised Code of Washington (RCW), and change the term “boarding home” to “assisted living facility” to be consistent with Substitute House Bill (SHB) 2056, also enacted in 2012, and
- 6) Allow applicants for the home care aide certification to request a brief adjudicative proceeding if they are disqualified from obtaining or holding a home care aide credential because they are disqualified from working with the elderly and persons with disabilities (“vulnerable persons”) under chapter 74.39A.RCW. This change is in a separate provision— WAC 246-10-501.

Section 2. What are the general goals and specific objectives of the proposed rule’s authorizing statute?

The general goal of chapter 18.88B RCW is to enhance the quality and competency of long-term care services provided to vulnerable persons. This chapter requires most long-term care workers to be certified as home care aides.

The 2012 amendments to chapter 18.88B RCW include provisions that require the Department to adopt rules that: (a) define a scope of practice for all long-term care workers; and (b) prohibit home care aide certification for all long-term care workers who are disqualified by DSHS from working with vulnerable persons under chapter 74.39A RCW. Another provision authorizes holders of a home care aide credential who have been trained to perform certain nursing care tasks to do so when delegated by a registered nurse.

Section 3. What is the justification for the proposed rule package?

The proposed rules define a scope of practice for long-term care workers. This assures that employers, clients, licensees and government agencies—as well as long-term care workers themselves—understand what a long-term care worker may do. The rules also specify the action the Department will take against applicants for and holders of a home care aide credential holder who have been disqualified by DSHS from working with vulnerable persons under chapter 74.39A RCW and provide for a brief adjudicative process to appeal the Department’s decision.

In addition, the rules establish requirements for home care aides to accept tasks delegated by registered nurses.

Adopting these rules and requirements will help assure quality of care for the elderly and persons with disabilities.

The Department has assessed and determined that there are no feasible alternatives to rulemaking because the statute requires the adoption of rules to implement its provisions. In addition, standards for licensure that are broadly set out in statute can only be enforced when they are set in rule.

Section 4. What are the costs and benefits of each rule included in the rules package? What is the total probable cost and total probable benefit of the rule package?

Identification of total number of rules in package. 15

Non-Significant Rule Identification Table

Table: Non-Significant Rule Identification

#	WAC Section	Section Title	Section Subject	Reason
1	WAC 246-980-010	Definitions	Definitions provide clarification and interpretation needed for these rules. They do not set standards.	This section is an interpretive rule as defined in RCW 34.05.328(5)(c)(ii).
2	WAC 246-980-020	Who must be certified as a home care aide?	Changes to this rule include renaming “boarding home” as “assisted living facility,” which is consistent with Chapter 10, Laws of 2012 (HB 2056) and renaming “community residential service providers” as “workers employed by a community residential service business,” which	The rule is exempt under RCW 34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.

#	WAC Section	Section Title	Section Subject	Reason
			is consistent with Chapter 164, Laws of 2012 (ESHB 2314).	
3.	WAC 246-980-050	How long does a nonexempt long-term care worker have to complete the home care aide training and certification requirements?	Changes to the rule include corrections to the RCW reference that requires training. This RCW citation was changed as a result of Initiative -1163 (I-1163).	The rule is exempt under RCW 34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.
4.	WAC 246-980-060	How does a nonexempt home care aide renew a certification or reinstate an expired certification?	Changes to the rule include corrections to the RCW reference that requires training. This RCW number was changed as a result of I-1163.	The rule is exempt under RCW 34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.
5.	WAC 246-980-080	How does an exempt individual apply for certification as a home care aide?	Changes to the rule include corrections to the RCW reference that requires training. This RCW citation was changed as a result of I-1163.	The rule is exempt under RCW 34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.
6.	WAC 246-980-090	How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?	Changes to the rule include corrections to the RCW reference that requires training. This RCW citation was changed as a result of I-1163.	The rule is exempt under RCW 34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.
7.	WAC 246-980-100	Examination and	Changes to the rule include	The rule is exempt under RCW

#	WAC Section	Section Title	Section Subject	Reason
		reexamination for home care aide certification.	corrections to the RCW reference that requires training. This RCW citation was changed as a result of I-1163.	34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.
8.	WAC 246-980-110	Continuing Education	Changes to the rule include corrections to the RCW reference that requires training. This RCW citation was changed as a result of I-1163.	The rule is exempt under RCW 34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.
9.	WAC 246-980-120	Home care aide – Application – Conviction data – Criteria for denial or conditional license.	This rule is being amended to add that a long-term care worker disqualified from obtaining or having a home care aide certification includes long-term care workers disqualified from working with vulnerable persons under chapter 74.39A. RCW. This change is made in Chapter 164, Laws of 2012.	The rule is exempt under RCW 34.05.328(5)(b)(iii) because it incorporates a Washington state statute by reference without material change.

Significant Rule Analysis

A. WAC 246-10-501 Application of brief adjudicative proceedings

Rules Overview: Normally, denial or revocation of a credential requires a full adjudicative proceeding as described in RCW 18.130.100. However, RCW 34.05.482, allows a “brief adjudicative procedure” if a document review is all that is needed to determine the outcome. The proposed rule allows the Department to use a brief adjudicative proceeding for an applicant or

current credential holder who is appealing the Department's denial or revocation of a home care aide credential because DSHS has disqualified him or her from working with vulnerable persons under chapter 74.39A RCW. Because the Department has to prove only that the applicant or credential holder has had a DSHS action under chapter 74.39A RCW, a brief adjudicative procedure allows for due process without the cost of a full proceeding. The applicant or credential holder can obtain a review of the Department's decision from a health law judge if desired.

Rules cost/benefit: RCW 18.88B.080 specifically prohibits a long-term care worker who has been disqualified from working with vulnerable persons under chapter 74.39A RCW from being certified or maintaining certification as a home care aide. Appealing the Department's denial or revocation of this credential in a brief adjudicative proceeding does not require filing fees or legal representation, so an applicant or credential holder's cost of filing an appeal may be limited to paper and mailing costs.. However, it does save the program money by allowing a paper review instead of incurring the costs of a hearing. This reduces the cost of administering the home care aide program and helps keep credentialing fees stable.

B. WAC 246-980-030 Can a nonexempt long-term care worker work before obtaining certification as a home care aide?

Rules Overview: The law allows a long-term care worker to provide care before receiving certification as a home care aide as long as the worker has completed five hours of training in safety and orientation. The proposed rule specifies that the long-term care worker must submit an application for home care aide certification within fourteen days of hire.

The following proposed changes are non-significant:

- Updating the RCW citations related to long-term care worker training requirements mandated by I-1163 from RCW 74.39A.073 to RCW 74.39A.074.

The following proposed changes are significant:

- The proposal changes the deadline for submitting the application for a home care aide certification from three days after being hired as a long-term care worker to fourteen days.

Rules cost/benefit: Changing the application deadline requirement from three to fourteen days does not incur a cost to the worker. Home care agencies that receive public funds are audited to determine if they and their home care aide employees comply with all state and federal laws. Employees who are unable to meet the three-day requirement in the current rule may cause the home care agency to be out of compliance with state law. This can result in the cancellation of agency funding contracts and home care aide employees potentially being terminated, leaving vulnerable patients without care. The proposed rule allows extra time for the applicant to provide the Department with required application information. This extension of the application deadline helps home care agencies avoid problems with their contracts, helps long-term care

workers comply with the rule, and helps maintain continuity of care for vulnerable persons receiving long-term care services.

C. WAC 246-980-040 What must a nonexempt long-term care worker do to be eligible for a home care aide certification and what documentation is required?

Rules Overview: The proposed rule explains the requirements for a home care aide certification and the documentation that must be submitted to both the examination contractor and the Department.

The following proposed changes are considered to be non-significant:

- Clarification that AIDS education is included in the basic training requirements so that applicants know that they don't need to take the training twice. This clarifies the language of the rule without changing its effect.
- Updating the RCW citations related to long-term care worker training requirements mandated by I-1163 from RCW 74.39A.073 to RCW 74.39A.074.

The following proposed change is significant:

- The proposed rule removes a requirement to send a training certificate of completion to the examination contractor. While the rule still requires the certificate of completion to be submitted to the Department, it allows the certificate of completion or other official verification to be submitted directly from the approved instructor or training program.

Rules cost/benefit: This reduces the amount of documentation that the applicant must submit, and allows him or her to submit the documentation in an alternate method, if available. It does not add any additional burden or cost.

D. WAC 246-980-070 Who is exempt from obtaining a home care aide certification?

Rules Overview: The proposed rule describes and clarifies which long-term care workers are exempt from the requirement to obtain a home care aide certification. RCW 74.39A.009 (17)(b) and RCW 18.88B.041 specifically identify these workers.

The following proposed changes are non-significant because they incorporate or adopt by reference statutory language without changing its effect:

- Adding an exemption for persons who are currently in nursing assistant training programs. This change is a result of Chapter 169, Laws of 2010 (Engrossed Substitute Senate Bill 6582).
- Changing a "community residential service provider" to "a worker employed by a community residential service business." This change is the result of definition changes in Chapter 164, Laws of 2012 (ESHB 2314).
- Updating the RCW citations related to long-term care worker training requirements mandated by I-1163 from RCW 74.39A.073 to RCW 74.39A.074.

The following proposed changes are significant:

- The proposed rule clarifies that an individual in a nursing assistant-certified training program must complete the program within one hundred twenty days of the date of hire and that the nursing assistant-certified credential must be issued within one hundred fifty days of the date of hire. This protects patients by assuring that a worker who is unable to pass the nursing assistant-certified training or examination is not able to simply re-enroll in training and continue to work.
- The proposed rule removes the exemption for certified counselors, speech language pathologists and audiologists, occupational therapists and physical therapists. Changes in the law now allow them to work under their license in these settings without requiring them to also obtain a home care aide credential. However, if the provider wants to work solely as a long-term care worker, then he or she must obtain training and the home care aide certification.
- The home care aide statute exempts “Medicare-certified home health aides.” The problem is that the certification does not exist in federal or state law. In order to recognize this exemption, the rules currently exempt home health aides who work for an agency that is reimbursed by Medicare if the aide has completed training required by federal law. However, because home health aides are not defined as long-term care workers, they are not required to obtain a home care aide certification, which means that this exemption does not benefit them. The proposed rules clarify that anyone who has worked as a home health aide for an agency reimbursed by Medicare within the year before being hired as a long-term care worker and who has met the training required by federal law for home health aides is exempt from the training and certification requirements.
- RCW 74.39A.009 (17)(b) lists workers who are not included in the definition of a long-term care worker, including persons employed in licensed nursing homes, hospitals, residential habilitation centers, hospice agencies, and adult day health or day care centers. These workers were originally included under exemptions in WAC 246-980-070. However, since they are not defined as “long-term care workers,” the current rule is confusing. Consequently, these categories of workers are being removed from this definition for clarification purposes.

Rules Cost/Benefit Analysis: The benefit of the proposed rule is that it acknowledges there are certain long-term care workers who—because of their credentials or experience—already possess the skills to provide care while assuring that those who are exempt are either in training or already qualified to perform these tasks. The proposed rule also removes confusion surrounding the difference between workers who do not require certification because they are not defined as “long-term care workers” and those who are “long-term care workers” but exempt from certification. This proposed rule protects the vulnerable elderly and persons with disabilities by requiring all long-term care workers are competent through proper training and/or experience. These benefits outweigh the cost of training, examination and certification for long-term care workers who are not exempt under this rule.

Individuals who hold a credential as a certified counselor, speech language pathologist and audiologist, occupational therapist (or occupational therapist assistant) or physical therapist (or a physical therapist assistant) who decide they want work solely as a long-term care worker rather than within the scope of their current license must obtain training and certification. Cost of training programs range from approximately \$335 to \$725 for 75 hours of training. The cost to take both the written and skills portion of the examination is \$115. The costs for the home care aide certification are \$60 to apply and \$60 each year to renew.

Long-term care workers earn on average between \$9.19 and \$13.00 an hour.

E. WAC 246-980-130 Provision for delegation of certain tasks.

Rules overview: Chapter 164, Laws of 2012 (ESHB 2314) amended RCW 18.88B and RCW 18.79.260 to allow registered nurses to delegate nursing tasks to long-term care workers who have a home care aide certification. Nursing tasks include anything that would normally require a nursing license, such as administering medication, wound care, and care related to tube feeding. Before the amendment of these statutes, long-term care workers could not perform nurse-delegated tasks unless they held a nursing assistant-certified (NA-C) credential or both a home care aide credential and a nursing assistant-registered (NA-R) credential. The proposed rule clarifies that a long-term care worker with a home care aide credential does not have to also hold an NA-R credential in order to perform delegated tasks. This is a cost savings for the credentialed home care aide who otherwise must pay \$48 NA-R application fee and \$53.00 per year for renewal of the NA-R credential.

The following proposed changes are non-significant:

- The proposed rule includes requirements that credentialed home care aides complete a core delegation training class and also complete a diabetic training if they will be performing insulin injections; both the class and training must be approved by DSHS. This is non-significant because it is already required by RCW 18.88B.070 (2)(a). The rule incorporates the language of the statute without material change.

The following proposed changes are significant:

- The Nursing Care Quality Assurance Commission (NCQAC) has adopted rules to assure that nursing assistants are safe when they perform nurse delegation. These rules include requirements that nurses must first assess the patient's needs, determine the task to be delegated can be properly and safely performed by the certified home care aide, allow only for tasks to be performed for the specific patient receiving care, and only with the patient's consent.

Under a separate rule proceeding, NCQAC is proposing changes to WAC 246-840-910 through WAC 246-840-970 regarding the tasks that a registered nurse can delegate to a certified home care aide. The proposed new WAC 246-980-130 requires that certified home care aides comply with all applicable requirements in WAC 246-840-910 through WAC 246-840-970 as these rules are amended by NCQAC.

Cost/Benefit Analysis: The benefit of the proposed rules is that patients for whom nurse-delegated tasks are performed are protected: registered nurses and home care aides are following delegation procedures already in place for nursing assistants. Because the proposal contains the same requirements already set out for nursing assistants by NCQAC and the same training requirements already adopted in rules for home care aides by DSHS, there are no new costs to home care aides as a result of this Department proposal.

F. WAC 246-980-140 Scope of practice for long-term care workers.

Rules overview: Chapter 164, Laws of 2012 (ESHB 2314) requires the Department to establish by rule a single scope of practice that encompasses both long-term care workers who are certified home care aides and long-term care workers who are exempted from certification. The proposals uses policies and definitions already in place, including RCW 74.39A.009 (12), which defines “activities of daily living” and describes “instrumental activities of daily living.”

Cost/Benefit Analysis: There is no cost involved in establishing a scope of practice. The benefit is that workers, employers and clients can refer to this rule to determine if someone is performing tasks that a long-term care worker performs.

Rule Package Cost-Benefit Conclusion

Cost/Benefit summary

Significant proposed changes to chapter 246-980 WAC include changing who is exempt from having to obtain training and certification as a home care aide in order to be able to perform work as a long-term care worker; placing certain requirements on home care aides who perform nurse-delegated tasks; developing a scope of practice for long-term care workers; and using a brief adjudicative proceeding for applicants or credential holders who are ineligible to hold a home care aide credential because they already have been disqualified from working with vulnerable persons under chapter 74.39A RCW.

Costs are imposed for the following proposed requirements:

Persons who are no longer exempt from the home care aide training and certification requirements must obtain and pay for training, examination and certification if they decide to obtain work as a long-term care worker. There will be minor paper and mailing costs for a home care aide applicant or credential holder who requests a brief adjudicative proceeding when a credential has been denied or revoked due to disqualification by DSHS for an action involving abuse, neglect or exploitation of a vulnerable person.

Although there may be costs imposed, as described above, for certain long-term care workers to take the required training and an examination to become certified, the overall benefit of assuring they have the ability to perform competently as long-term care workers outweighs the costs of training, examination and certification.

Section 5. What alternative versions of the rule did we consider? Is the proposed rule the least burdensome approach?

Descriptions of alternatives considered

Alternative version:

The Department considered the following:

WAC 246-10-501

The Department considered using the current full adjudicative process to appeal an action to deny or revoke the credential of a home care aide who has been disqualified from working with vulnerable persons under chapter 74.39A RCW. However, doing so would have meant that it would take longer to deny or revoke the credential, putting vulnerable persons at risk.

WAC 246-980-030

The Department considered keeping the requirement for long-term care workers to submit an application for home care aide certification within three days. The Department chose to change this requirement to fourteen days to make it easier for workers to comply with the requirement, to help home care agencies avoid contract issues, and to help prevent disruptions in care for vulnerable persons served by home care aides.

WAC 246-980-040

The Department considered keeping the requirement to send the training certificate of completion (COC) to both the testing vendor and the Department. The Department chose to change the rule to require the COC be sent only to us to make it easier for workers to comply with the requirement.

WAC 246-980-070

The Department considered keeping the current exemptions from the home care aid credentialing requirements. The decision to eliminate certain exemptions was made to assure that all home care aides are properly trained and that proper care is given to all vulnerable persons under their care.

WAC 246-980-130

The Department considered a shorter rule as some of this information can be found in RCW 18.79.260. However, the proposed rule allows a home care aide to find all information regarding nurse delegation requirements in one place.

WAC 246-980-140

The Department considered using more descriptive language for the scope of practice for long-term care workers. This would have meant describing specific tasks under each category. However, doing so would have been very prescriptive and may have left some important specific tasks out of the definition, leaving questions about whether the home care aide could actually perform those tasks.

Section 6. Did you determine that the rule does not require anyone to take an action that violates another federal or state law?

The proposed rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

Section 7. Did we determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless the difference is required in federal or state law?

The Department determined that the rule does not impose more stringent performance requirements on private entities than on public entities. All costs are borne by the applicant for a home care aide credential.

Section 8. Did you determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, did we determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary?

The rule does not differ from any applicable federal regulation or statute.

Section 9. Did we demonstrate that the rule has been coordinated, to the maximum extent possible, with other federal, state, and local laws applicable to the same activity or subject matter?

Yes. The rule is coordinated to the maximum extent practicable with other applicable laws, including the nurse delegation training rules established by NCQAC. The Department also made changes to the draft proposed rules for scope of practice based on DSHS comments.

The Department has worked closely with DSHS to assure that the proposed rules correlate with DSHS procedures and rules for long-term care worker training.